

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 346

AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 7.1-3-23-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 31. ~~Appeal by Applicant for Wholesalers' Permit.~~ An applicant aggrieved by the action of the commission in denying, failing to renew, or revoking, a wholesaler's permit of any type, contrary to the provisions of ~~IC 1971, 7.1-3-23-30, IC 7.1-3-23-30,~~ shall have the right to secure a review of that determination by petition to the superior court of Marion County under the same conditions and in the same manner and mode of procedure as provided in this chapter for other appeals. The ~~judges of the superior court of Marion County, or a majority of them sitting in the action for review~~ shall, from the evidence presented, determine if the applicant has been denied a permit or renewal, or has had his permit revoked, on arbitrary, capricious, or political grounds and if ~~they so determine the court determines that the permit or renewal was improperly denied or revoked,~~ the court shall issue a writ of mandate ordering the commission to issue, renew, or reinstate the permit. However, either party shall have the right of appeal from the judgment of the superior court of Marion County as an appeal is taken in a civil action.

SECTION 2. IC 36-3-4-3, AS AMENDED BY P.L.230-2005, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) The city-county legislative body shall, by

SEA 346 — Concur+



C
o
p
y

ordinance, divide the whole county into twenty-five (25) districts that:

- (1) are compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) contain, as nearly as is possible, equal population; and
- (3) do not cross precinct boundary lines.

This division shall be made during the second year after a year in which a federal decennial census is conducted and may also be made at any other time, subject to IC 3-11-1.5-32.

(b) The legislative body is composed of twenty-five (25) members elected from the districts established under subsection (a) and four (4) members elected from an at-large district containing the whole county.

(c) Each voter of the county may vote for four (4) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The four (4) at-large candidates receiving the most votes from the whole county and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(d) If the legislative body fails to make the division before the date prescribed by subsection (a) or the division is alleged to violate subsection (a) or other law, a taxpayer or registered voter of the county may petition the superior court of the county to hear and determine the matter. **The court shall hear and determine the matter as a five (5) member panel of judges from the superior court. The clerk of the court shall select the judges electronically and randomly. Not more than three (3) members of the five (5) member panel of judges may be of the same political party. The first judge selected shall maintain the case file and preside over the proceedings.** There may not be a change of venue from the court or from the county. The court ~~sitting en banc~~ may appoint a master to assist in its determination and may draw proper district boundaries if necessary. An appeal from the court's judgment must be taken within thirty (30) days, directly to the supreme court, in the same manner as appeals from other actions.

(e) An election of the legislative body held under the ordinance or court judgment determining districts that is in effect on the date of the election is valid, regardless of whether the ordinance or judgment is later determined to be invalid.

SECTION 3. IC 36-4-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) If uncertainty exists or a dispute arises concerning the executive or legislative nature of a power or duty exercised or proposed to be exercised by a branch, officer, department, or agency of the government of a municipality, a petition

C
o
p
y



may be filed in the circuit court of the county in which the municipality is located by the municipal executive, another municipal elected official, the president of the municipal legislative body, or any person who alleges and establishes to the satisfaction of the court that ~~he~~ **the person** is or would be adversely affected by the exercise of the power; however, in a county ~~having~~ **that does not contain a consolidated city and that has** a superior court ~~that has~~ **with** three (3) or more judges, the petition shall be filed in the superior court and shall be heard and determined by the court sitting en banc.

(b) In a county containing a consolidated city, the petition shall be heard and determined by a five (5) member panel of judges from the superior court. The clerk of the court shall select the judges electronically and randomly. Not more than three (3) members of the five (5) member panel of judges may be of the same political party. The first judge selected shall maintain the case file and preside over the proceedings.

(c) The petition must set forth the action taken or the power proposed to be exercised, and all facts and circumstances relevant to a determination of the nature of the power, and must request that the court hear the matter and determine which branch, officer, department, or agency of the municipality, if any, is authorized to exercise the power. On the filing of the petition, the clerk of the court shall issue notice to the municipal executive, each municipal elected official, and the president of the municipal legislative body, unless the petition was filed by that person, and to the municipal attorney, department of law, or legal division.

~~(c)~~ **(d)** The court shall determine the matters set forth in the petition and shall affix the responsibility for the exercise of the power or the performance of the duty, unless it determines that the power or duty does not exist. Costs of the proceeding shall be paid by the municipality, except that if an appeal is taken from the decision of the court by any party to the proceeding other than the municipal executive, another municipal elected official, or the president of the municipal legislative body, the costs of the appeal shall be paid by the unsuccessful party on appeal or in the manner directed by the court deciding the appeal.

SECTION 4. IC 36-7-15.1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A person who filed a written remonstrance with the commission under section 10 of this chapter and is aggrieved by the final action taken may, within ten (10) days after that final action, file with the presiding judge of the superior court a copy of the order of the commission and ~~his~~ **the**

C
o
p
y



person's remonstrance against that order, together with ~~his~~ **the person's** bond, as provided by IC 34-13-5-7, in the event the appeal is determined against ~~him~~ **the person**. The burden of proof is on the remonstrator, and no change of venue may be granted.

(b) An appeal under this section shall be promptly heard by the court without a jury. **Except in a county containing a consolidated city**, all the judges of the court, or a majority of the judges if not all are available, shall hear the appeal. **In a county containing a consolidated city, the appeal shall be heard by one (1) judge unless rules adopted by the court or by the Indiana supreme court require an appeal to be heard by additional judges.** All remonstrances upon which an appeal has been taken shall be consolidated and heard and determined within thirty (30) days after the time of the filing of the appeal. The court shall decide the appeal based on the record and evidence before the commission, not by trial de novo. It may ~~by a vote of at least a majority of all the elected judges~~ confirm the final action of the commission or sustain the remonstrances. **If the appeal is decided in a county that does not contain a consolidated city, the vote of at least a majority of all the elected judges is required to confirm the final action of the commission or sustain the remonstrances.** The judgment of the court is final and conclusive, unless an appeal is taken as in other civil actions. An appeal to the court of appeals or supreme court has priority over all other civil appeals.

C
o
p
y



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

**C
o
p
y**

SEA 346 — Concur+

